



SEPTEMBER 2013

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**Utah School Law Update** is a publication of the Utah State Office of Education

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## EDUCATORS DOING THE WRONG THING(S) FOR THE RIGHT REASON(S)

Every now and again, UPPAC investigates an educator who engages in misconduct for all the right reasons, and still finds herself in trouble. These are difficult cases for the Commission because when a person means well, taking disciplinary action against the person's license feels well . . . wrong. On the other hand, there is rarely a situation where another option was not available to a teacher who chose to violate the Educator Standards for a "higher cause." While good intentions may be mitigating, they are not exculpatory. Some real-life examples of well-intentioned, but poorly executed behavior: One educator felt a special concern that a student who was homosexual would be picked on and ostracized, and remembering the effects that teasing and bullying had on him as a kid, the teacher went out of his way to make the student feel accepted and understood. Unfortunately, the teacher went too far out of his way, sending the student text messages with sexual overtones and frequently talking to the student about his boyfriend. The teacher

intended for his text messages and conversations to make the student feel that his sexuality was normal and that he could joke around about sex regardless of his sexual orientation. This educator was reminded that no matter how genuinely he felt concern for the student, it is never appropriate to text with students about sex—or text at all with individual students.

Another, less obvious and more difficult case for the Commission, involved a teacher concerned about the possible medical neglect of one of her students. The student had asthma and when the teacher noticed that the student had run out of his asthma medication, she asked the student's mother to send more medication to school for the student's wellbeing. The mother did not send more medication, and so the teacher, being asthmatic herself, allowed the student to use her inhaler with albuterol, even allowing the student to take the inhaler home with him. The teacher felt justified in her actions, but at the end of the day, providing her own medication to a student violates state law as well as her responsibilities as a professional educator.

Many teachers flirt with the line

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## YOUR QUESTIONS

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**Q:** Where can I learn about the laws and any school policies or timelines about school fees? I think I am hearing one thing from my daughter's coaches and something else from the school principal. When I call the school district office, I get another different answer?—Interested Parent

**A:** There are several places, websites and sources of information about school fees. They should all be consistent! First look at the Utah Constitution. Article X, Sec. 2 in the Utah

Constitution states that **2** "Public elementary and secondary schools shall be free . . ." Then there is an important qualifier: "... except the Legislature may authorize the imposition of fees in the secondary schools." This is the basis for saying that no fees, costs, stipends should be charged for elementary school regular school day programs. Fees can be charged to secondary school students—as directed by the Legislature.

Next, look at the direction from the Legislature. This is in Utah Code Sec. 53A-12-101 through 104. There are various important provisions and definitions in this section. One of the important provisions is the local boards of education must approve all fees charged in the schools under the local boards' control.

Next, the Utah State Board of Education has an administrative

between ethical and unethical conduct when they try to "help" a student through a difficult time. In so doing, the teacher talks with a student late into the evening to discuss personal matters, offers prayers and blessings on students, stays late after school to play therapist to a grief-stricken or confused or stressed or angry teenager. Even spending a lunch hour delving into the personal lives of students, if those conversations touch on students' political or religious affiliation, salary of parents, mental or psychological problems, sexual issues, or other topics listed in 53A-13-302, puts the educator at risk of violating ethical responsibilities and the law. While an educator's best quality is his genuine love and concern for his students, we would all do well to remember, we've been trained to teach, not to treat, and acting as a self-designated therapist is not part of any educator's job description. Struggling students may need help; but the informed and clear thinking educator should direct students to those better equipped to handle students' personal problem than the classroom teacher.

In each of the above situations, there was another way to accomplish the same positive goal the educator intended. Teachers can refer students to



school guidance counselors. A teacher can personally notify the Division of Child and Family Services if the teacher believes that a student is not receiving care or medication at home that she may need. Teachers can contact parents with concerns that teachers may have observed, but parents may not have noticed. Rarely has UPPAC seen a situation where an educator was forced to choose between helping a struggling student and complying with her ethical responsibilities. The ideal educator will look to parents or appropriate outside resources to find help for students; she will always maintain a sense of professionalism, responsibility and maturity in her conduct with students.

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## AUGUST BOARD ACTION

The Utah State Board of Education took the following action in the previous month:

The license of Stacy Bernesser was reinstated following a hearing

The license of Julie Burton was reinstated following a hearing.

The license of Michael Arehart was suspended as a result of accessing sexually explicit images through his school computer.

The license of Lance Gritton was suspended for driving to his school while legally intoxicated and entering the building carrying a flask of alcohol shortly after 6:00 a.m., before students were in the building.

The license of Paul Hermann was suspension for entering school while intoxicated.

The license of Julie Tucker was suspended for leaving an asthma inhaler and associated medication on her school desk and failing to discourage a student from using the medication.

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**UtahPublicEducation.org**  
The Official Blog of the Utah State Board of Education and the Utah State Office of Education

Utah Education

## NURSING SERVICES IN SCHOOLS

*Contributor, Lisa Arbogast, M.Ed., J.D., IDEA Compliance Officer, USOE*



Recently, the California Supreme Court ruled that California state law allows unlicensed school personnel to administer insulin in the absence of a nurse, with the permission of parents and physicians. Because this ruling rests on the individual state's law governing delegation of administration of medications, it is important to understand the law pertaining to your particular state.

In Utah, the Nurse Practice Act governs the practice of nursing including school nurses' delegation of administration of medication. R156-31b-701 and 701a. Essentially, the licensed nurse is accountable for the appropriate delegation of tasks and for the nursing care of the patient. Tasks requiring the specialized knowledge, judgment and skill of a licensed nurse may not be delegated to unlicensed assistive personnel. The licensed nurse, using professional judgment and a careful analysis of the patient's needs and circumstances, is responsible for determining whether the task is one that must be performed by a nurse or may be delegated to unlicensed assistive personnel. R156-31b-701.

In a school setting, any delegated tasks must be identified within a current individual health care plan (IHP). Any unlicensed person, who administers medication to a student as a delegate of a school nurse, must receive training from a school nurse, at least annually. In Utah, the routine provision of scheduled or correction dosage of insulin and the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the student's IHP is not an action that requires nursing assessment or judgment prior to administration and may be delegated. Insulin and glucagon injections by the delegate shall only occur when the delegate has followed the guidelines of the IHP. [R156-31b-701(a)(6).]

In addition to the rules governing any and all delegation of nursing tasks, delegation of nursing tasks in the school setting are subject to the following considerations:

The action of the mediator determines if the drug is appropriate for delegation. Any medication with known, frequent side effects that can be life threatening must not be delegated.

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rule that implements the state Constitution and the state law. See R277-407 for MORE information about school fees. This Rule provides helpful definitions, explains fees for activities or programs that are outside of the regular elementary school day and also explains when fee waiver is presumed.

Finally, your school district and school probably have additional policies that provide fee information. For instance, by what date are fees due? What if my children do not technically qualify for fee waivers—but we have had some unusual circumstances in our family; what

**4** provisions are there for delaying the payment of fees or for pro-rating fees? What if I paid my children's fees and my family moved unexpectedly to a neighboring school district? Can I get a refund?

School fees are legal in Utah schools. The laws, rules and policies, however, should be consistently applied. And, parents have a right to know which laws and policies apply and where to learn about them.

**Q:** As a school teacher, I have access to important and confidential student information. What if I hear something about a student that I can verify by accessing the student database? Can I do that—to help the student or to tell the parents? I want to do what is right professionally but I also want to help kids.—Uncertain teacher

**A:** There is a federal law that governs student records. The law is the Family Education Rights and

Administration of medications requiring the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug must not be delegated to unlicensed individuals.

A nurse working in a school setting may not delegate the administration of the first dose of a new medication or a dosage change.

A nurse may not delegate administration of any medication which requires nursing assessment or judgment prior to or immediately after administration. [R156-31b-701(a).]

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## TRUTHFUL EMPLOYMENT RECOMMENDATIONS

The thorny discussion of a school district balancing and managing its employment decisions with a district's responsibility to protect children throughout the public education system continues. A recent case, decided by the Illinois Supreme Court in August 2012, involved an elementary school teacher (Jon White) in McLean School District in Illinois. The Plaintiffs in the lawsuit (parents of 2 elementary age daughters in the Urbana School District) alleged that Mr. White's school administrators disciplined Mr. White for various specific abuse-related problems that occurred for periods during two school years. The administrators subsequently "kept . . . [Mr. White] out of his classroom because of his teacher-on-student sexual harassment and/or sexual grooming and/or sexual abuse" at the end of the school year. The district entered into a severance agreement with Mr. White which concealed the abuse.

The Plaintiff parents allege that the McLean District provided an inaccurate employment verification form to the Urbana School District that hired Mr. White for the subsequent school year. The McLean District stated that Mr. White "worked during the entire school year" when, in fact, he was removed from the classroom. The McLean District also did not report Mr. White's activities to the [Illinois] Department of Children and Family Services. Both of Plaintiff's daughters were victims of abuse by Mr. White in the Urbana School District.

The trial court dismissed the Plaintiff's claims against the McLean School District, finding that the McLean School District could not have foreseen (in the legal sense) future abuse to future students in a completely different school district. The court of appeals found that the McLean School District **did** have an affirmative duty to future students and (1) the district failed to warn the new school district; (2) the district failed to report White's conduct to authorities; and

Privacy Act (FERPA). A teacher or parent can learn basic information about FERPA just by googling “FERPA.” FERPA explains that “school officials, including teachers, within the agency or institution [within the school and public school system] can receive information about students IF the school official (as determined by the agency ) has ‘legitimate educational interests’”. SO, if you need information about a student to serve him better as a teacher, check his records. Reasons to check (and these are just examples): (1) a third grader is struggling with reading—has he always struggled with reading? What do his past test scores tell me? (2) a 10th grade student falls asleep in class—is there information about a disability in her student record? (3) a sixth grade student is suddenly excelling in science. Is there anything in her school records that would tell me what other teachers did to encourage her achievement? Who was her fourth grade teacher? What did he do—that seems to be the grade when her grades and interest were sparked? Teachers who are uncertain about their “legitimate educational interest” in students’ records should talk to their principals and district/charter school supervisors for advice. Err on the side of protecting the privacy and confidentiality of student records.



(3) the McLean District created and tendered a false letter of recommendation for White. The Illinois Supreme Court also found the McLean School District culpable for the abuse perpetrated on Plaintiff’s daughters—but for a different reason. The state supreme court found that the McLean District’s responsibility to the students in the Urbana School District arose because the McLean District misrepresented information about White’s employment on the employment verification form that was either offered or available to subsequent employers. White **was not employed by the McLean District for the full school year—“... White was subject to disciplinary removal from his classroom twice during the school year, and his employment ended at some time prior to the end of the school year.”** The Urbana District relied on the McLean District’s neutral statement of full employment in the immediately previous school year—and the employment statement was not true. “A truthful disclosure on the employment verification form could well have been a ‘red flag’ to Urbana to investigate the circumstances of White’s departure from McLean. Had Urbana been made aware of the discrepancy in White’s prior employment with McLean, it is certainly possible that it would have investigated further and either not hired White or fired White before he abused the plaintiffs in this case.” The Illinois Supreme Court also found that White’s abuse of other elementary age students was “reasonably foreseeable,” absent accurate employment information from the terminating school district.

The court found that the McLean School District had a duty to protect the children in subsequent school districts—by at the very least providing accurate employment information about an employee who was disciplined for heinous behavior and terminated before the end of the school year. Accurate information could have prompted subsequent employers to ask important questions about the teacher’s conduct.

*Doe-3 v. McLean County Unity District No. 5 Board of Directors*, 2012 IL 112479

The material in this newsletter is provided as—information. It is not legal advice. If the reader sees a conflict with this information and district policy, practice, or State law, he should as an attorney or contact the LEA.

## WHAT IS UPPAC?

UPPAC is a committee of nine educators and two community members charged with maintain and promoting a high standard of professional conduct and ethics among Utah teachers. It is advisory to the Utah State Board of Education in making recommendations regarding educator licensing and may take appropriate disciplinary action regarding educator misconduct.

The Government and Legislative Relations Section at the Utah State Office provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the State Office.